

FEDERAL TRADE COMMISSION  
Washington, DC 20580

In the Matter of )  
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Uber Technologies, Inc. )  
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**Complaint, Request for Investigation, Injunction, and Other Relief**

**Submitted by**

**The Electronic Privacy Information Center**

**I. Introduction**

1. This complaint concerns proposed changes in the business practices of Uber,<sup>1</sup> the largest “ridesharing” service in the United States<sup>2</sup>. In less than four weeks, Uber will claim the right to collect personal contact information and detailed location data of American consumers, even when they are not using the service.<sup>3</sup> These changes ignore the FTC’s prior decisions, threaten the privacy rights and personal safety of American consumers, ignore past bad practices of the company involving the misuse of location data, pose a direct risk of consumer harm, and constitute an unfair and deceptive trade practice subject to investigation by the Federal Trade Commission.

**II. Parties**

2. The Electronic Privacy Information Center (“EPIC”) is a public interest research center located in Washington, D.C. EPIC focuses on emerging privacy and civil liberties issues and is a leading consumer advocate before the FTC. EPIC has a particular interest in protecting consumer privacy and has played a leading role in

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<sup>1</sup> Katherine Tassi, *An Update On Privacy at Uber*, UBER.COM, (May 28, 2015), <http://newsroom.uber.com/2015/05/an-update-on-privacy-at-uber/>.

<sup>2</sup> Daniel Miller, *Lyft vs. Uber: Just How Dominant Is Uber in the Ridesharing Business?*, THE MOTLEY FOOL (May 24, 2015), <http://www.fool.com/investing/general/2015/05/24/lyft-vs-uber-just-how-dominant-is-uber-ridesharing.aspx>. The term “ridesharing” is frequently used to describe Uber. But of course Uber is a massive, commercial transportation service; passengers pay for rides, drivers receive a fee for each ride, and Uber collects a substantial fee and an enormous amount of personal data from the provision of the service. To describe Uber as a “sharing service” is akin to describing a hybrid dinosaur as a “theme park attraction.” See Jurassic World.

<sup>3</sup> *Id.*; see also *Privacy Statements*, UBER.COM, <https://www.uber.com/legal/privacy-proposed/users/en> (last visited June 14, 2015).

developing the authority of the FTC to address emerging privacy issues and to safeguard the privacy rights of consumers,<sup>4</sup> EPIC's complaint concerning Google Buzz provided the basis for the investigation and subsequent settlement in which the Commission found that "Google used deceptive tactics and violated its own privacy promises to consumers when it launched [Buzz]."<sup>5</sup> The Commission's settlement with Facebook also followed from a Complaint filed by EPIC and a coalition of consumer privacy organizations.<sup>6</sup>

3. Uber is an American company incorporated in Delaware since 2010.<sup>7</sup> Uber's primary place of business is 1455 Market St., Suite 400, San Francisco, CA 94103.<sup>8</sup> The Uber app allows the company to collect detailed personal information from consumers.<sup>9</sup>

### **III. Factual Background**

#### **A. Uber's Business Practices Affect Millions of Consumers**

4. Uber is a massive transportation company that pays local drivers to provide rides for hire based on the collection of detailed customer information, including location data, and payment and billing information.<sup>10</sup>

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<sup>4</sup> See, e.g., Letter from EPIC Exec. Dir. Marc Rotenberg to FTC Comm'r Christine Varney (Dec. 14, 1995) (urging the FTC to investigate the misuse of personal information by the direct marketing industry), [http://epic.org/privacy/internet/ftc/ftc\\_letter.html](http://epic.org/privacy/internet/ftc/ftc_letter.html); DoubleClick, Inc., FTC File No. 071-0170 (2000) (Complaint and Request for Injunction, Request for Investigation and for Other Relief), [http://epic.org/privacy/internet/ftc/DCLK\\_complaint.pdf](http://epic.org/privacy/internet/ftc/DCLK_complaint.pdf); Microsoft Corporation, FTC File No. 012 3240 (2002) (Complaint and Request for Injunction, Request for Investigation and for Other Relief), [http://epic.org/privacy/consumer/MS\\_complaint.pdf](http://epic.org/privacy/consumer/MS_complaint.pdf); Choicepoint, Inc., FTC File No. 052-3069 (2004) (Request for Investigation and for Other Relief), <http://epic.org/privacy/choicepoint/fcaltr12.16.04.html>.

<sup>5</sup> Press Release, Federal Trade Comm'n, FTC Charges Deceptive Privacy Practices in Google's Rollout of Its Buzz Social Network (Mar. 30, 2011), <http://ftc.gov/opa/2011/03/google.shtm> ("Google's data practices in connection with its launch of Google Buzz were the subject of a complaint filed with the FTC by the Electronic Privacy Information Center shortly after the service was launched.").

<sup>6</sup> In the Matter of Facebook, Inc., (2009) (EPIC Complaint, Request for Investigation, Injunction, and Other Relief), <https://epic.org/privacy/inrefacebook/EPIC-FacebookComplaint.pdf> [hereinafter EPIC 2009 Facebook Complaint]; In the Matter of Facebook, Inc., (2010) (EPIC Supplemental Materials in Support of Pending Complaint and Request for Injunction, Request for Investigation and for Other Relief), [https://epic.org/privacy/inrefacebook/EPIC\\_Facebook\\_Supp.pdf](https://epic.org/privacy/inrefacebook/EPIC_Facebook_Supp.pdf) [hereinafter EPIC 2009 Facebook Supplement]; In the Matter of Facebook, Inc., (2010) (EPIC Complaint, Request for Investigation, Injunction, and Other Relief), [https://epic.org/privacy/facebook/EPIC\\_FTC\\_FB\\_Complaint.pdf](https://epic.org/privacy/facebook/EPIC_FTC_FB_Complaint.pdf) [hereinafter EPIC 2010 Facebook Complaint].

<sup>7</sup> General Information Name Search, Delaware Department of State: Division of Corporations, <https://delecorp.delaware.gov/tin/controller> (last visited June 12, 2015).

<sup>8</sup> *Official Rules for Uber Contests and Sweepstakes*, UBER.COM (May 2, 2015), <http://newsroom.uber.com/uberidsweepstakes/>.

<sup>9</sup> *Company Overview of Uber Technologies, Inc.*, BLOOMBERG BUSINESS (June 12, 2015), <http://www.bloomberg.com/research/stocks/private/snapshot.asp?privcapId=144524848>.

<sup>10</sup> John Patrick Pullen, *Everything You Need to Know About Uber*, TIME (Nov. 4, 2014), <http://time.com/3556741/uber/>.

5. Uber has over 8 million users worldwide<sup>11</sup> and, with approximately 150 U.S. markets<sup>12</sup> and 160,000 American drivers,<sup>13</sup> is one of the largest transportation services in the USA.
6. In March 2015, Uber accounted for almost half of all rides expensed by employees whose companies use Certify, the second-largest provider of travel and expense management software in North America.<sup>14</sup> In March 2014, Uber accounted for only 15% of companies that use Certify – a jump of nearly 35%. In some cities, such as San Francisco and Dallas, Uber accounts for the majority of such rides.<sup>15</sup>
7. The company collects detailed personal information, including email, password, name, mobile phone number, zip code, and credit card information; “usage information,” such as browser and URL; and “device identifiers,” such as IP address, GPS coordinates, and cookies.<sup>16</sup>
8. Uber claims that it may disclose sensitive personal information to third parties, unaffiliated with the provision of the services to the customer.<sup>17</sup>
9. A top Uber executive in New York City was investigated for tracking the location of journalists reporting on the company.<sup>18</sup> The practice was specifically intended to identify and track critics of the company,
10. Prior to the emergence of Uber and other similar services, American consumers could routinely hire taxis without any disclosure of personal information or any tracking of their location.

## **B. Uber’s Official Statements Purport to Respect User Privacy**

11. Uber revised its “Privacy Policy” on May 28, 2015. Under the revised terms of use, Uber claims that “users will be in control: they will be able to choose whether to share the data with Uber.”<sup>19</sup>

<sup>11</sup> Lauren Moss, *Uber Spearheads Growth of The Shared Economy in Mexico*, GLOBAL DELIVERY REPORT (July 9, 2014), <http://globaldeliveryreport.com/uber-spearheads-growth-of-the-shared-economy-in-mexico/>.

<sup>12</sup> *Cities*, UBER.COM, <https://www.uber.com/cities> (last visited June 12, 2015).

<sup>13</sup> Chris O’Brien, *Princeton economist explains why we should all stop worrying and learn to love Uber*, VENTUREBEAT (Jan. 22, 2015), <http://venturebeat.com/2015/01/22/inside-ubers-staggering-u-s-growth-40000-drivers-joined-in-december-and-average-19-per-hour/>.

<sup>14</sup> Brad Stone, *Uber is Winning over Americans’ Expense Accounts*, Bloomberg, (June 19, 2015), <http://www.bloomberg.com/news/articles/2015-04-07/uber-is-winning-over-americans-expense-accounts>.

<sup>15</sup> *Id.*

<sup>16</sup> *Legal*, UBER, <https://www.uber.com/legal/usa/privacy> (last visited June 19, 2015).

<sup>17</sup> *Id.*

<sup>18</sup> Johana Bhuiyan & Charlie Warzel, “God View”: *Uber Investigates Its Top New York Executive For Privacy Violations*, BUZZFEED (Nov. 18, 2014), <http://www.buzzfeed.com/johanabhuiyan/uber-is-investigating-its-top-new-york-executive-for-privacy#.scM0ymqne>.

<sup>19</sup> Tassi, *supra* note 1.

12. Specifically, the revised privacy policy states:

**Location Information:** When you use the Services for transportation or delivery, we collect precise location data about the trip from the Uber app used by the Driver. If you permit the Uber app to access location services through the permission system used by your mobile operating system (“platform”), we may also collect the precise location *of your device when the app is running in the foreground or background*. We may also derive your approximate location from your IP address.

**Contacts Information:** If you permit the Uber app to access the address book on your device through the permission system used by your mobile platform, we may access and store names and contact information from your address book to facilitate social interactions through our Services and for other purposes described in this Statement or at the time of consent or collection.

**Important Information About Platform Permissions:** Most mobile platforms (iOS, Android, etc.) have defined certain types of device data that apps cannot access without your consent. And these platforms have different permission systems for obtaining your consent. *The iOS platform will alert you the first time the Uber app wants permission to access certain types of data and will let you consent (or not consent) to that request. Android devices will notify you of the permissions that the Uber app seeks before you first use the app, and your use of the app constitutes your consent.*<sup>20</sup>

13. Uber further stated, “We care deeply about the privacy of our riders and drivers. It’s why we’re always looking at ways to improve our practices.”<sup>21</sup>
14. In a statement released on May 28, 2015, Uber stated that the company will routinely collect user location data because “location data is essential to connect drivers to riders, while features like ‘Split Fare’<sup>22</sup> only work if Uber has access to a rider’s contact details.”<sup>23</sup>

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<sup>20</sup> *Privacy Statements*, UBER.COM, <https://www.uber.com/legal/privacy-proposed/users/en> (last visited June 14, 2015) (emphasis added).

<sup>21</sup> *Id.*

<sup>22</sup> Riders can split the fare of the ride by choosing the “Split Fare” option within the Uber app. They then select one of their phone’s contacts and tap a link within the app to send a message the person requesting to split the fare of the ride. If the contact confirms the ride fare may be split, then Uber will charge the riders equally. Brian, *Fare Splitting = Fair Splitting*, UBER.COM (July 15, 2013), <http://newsroom.uber.com/2013/07/faresplit/>.

<sup>23</sup> Tassi, *supra* note 1.

15. An Uber spokesperson stated that tracking passengers in real time and accessing users' address books are merely "potential new use cases" of its customers' data. "We are not currently collecting this data and have no plans to start on July 15. . . . If we decide to ask for these permissions, users will be in control and choose whether they want to share the data with Uber." The spokesperson stated that if the company ever launches those features, the app would still work even if the user opts out of the above uses.<sup>24</sup>
16. But virtually everyone who has reviewed the proposed changes in business practices has understood that the company plans even more expansive and more invasive uses of personal data even after it has engaged in egregious practices with the personal data in its possession. As one writer observed:

The car booking company now more clearly tells its customers it can pretty much track everything they do while using the Uber app, after facing criticism over privacy, especially its use of a tool called God View enabling the company to know where its riders were at any given moment.<sup>25</sup>

**C. Uber's Revised Business Practices Will Allow the Company to Routinely Track the Location of Internet Users Even When They are not Customers of Uber**

17. Uber's revised privacy policy creates several risks for American consumers.<sup>26</sup>
18. Uber will now collect the precise location of the user when the app is running in the foreground through traditional GPS location services.<sup>27</sup>
19. Uber will also collect precise location information if the app is operating in the background.<sup>28</sup> On phones running iOS, this means that Uber may be able to collect location data even after an app has been terminated by the user.<sup>29</sup>

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<sup>24</sup> *Id.*

<sup>25</sup> See, e.g., Eric Newcomer, "Uber Broadens Rider Privacy Policy, Asks for New Permissions," Bloomberg Business, May 28, 2015, <http://www.bloomberg.com/news/articles/2015-05-28/uber-broadens-rider-privacy-policy-asks-for-new-permissions>

<sup>26</sup> Natasha Singer, *Sharing Data, But Not Happily*, NYTIMES.COM (June 4, 2015), <http://www.nytimes.com/2015/06/05/technology/consumers-conflicted-over-data-mining-policies-report-finds.html>

<sup>27</sup> See *Privacy Statements*, *supra* note 19.

<sup>28</sup> *Privacy Statements*, *supra* note 19; see also *Receiving Location Updates*, ANDROID DEVELOPERS, <https://developer.android.com/training/location/receive-location-updates.html> (last visited June 19, 2015) ("Consider whether you want to stop the location updates when the activity is no longer in focus, such as when the user switches to another app or to a different activity in the same app.") (emphasis added).

<sup>29</sup> *Background Execution*, IOS DEVELOPER LIBRARY (Sept. 17, 2014), <https://developer.apple.com/library/ios/documentation/iPhone/Conceptual/iPhoneOSProgrammingGuide/BackgroundExecution/BackgroundExecution.html>. ("If the app starts this service and is then terminated, the system relaunches the app automatically when a new location becomes available.")

20. Even if a user disables the GPS location services on their phone, the company may still derive approximate location from riders' IP addresses.<sup>30</sup>
21. This collection of user's information far exceeds what customers expect from the transportation service. Users would not expect the company to collect location information when customers are not actively using the app, or have turned off their GPS location finder (as Uber can still collect location information through the phones' IP addresses).
22. Further, given Uber's statement that it will collect location data from a user's device only "[i]f you permit it to,"<sup>31</sup> a user would reasonably assume that the company does not track his or her location by other means. In fact, Uber may continue to "derive your approximate location from your IP address."<sup>32</sup>
23. Uber claims that it can use that information for additional purposes, to which the individuals in the contact list have not consented.<sup>33</sup> Such purposes may include "facilitating social interactions,"<sup>34</sup> and "allow[ing] Uber to launch new promotional features that use contacts – for example the ability to send special offers to riders' friends or family."<sup>35</sup>
24. Uber claims that it will allow users to opt-out of these features. However, this change in business practices places an unreasonable burden on consumers and is not easy to exercise: while iOS users can later disable the contact syncing option by changing the contacts setting on their mobile devices, the Android platform does not provide any such setting.<sup>36</sup>
25. These statements could lead users to believe that that they can choose to not share location data with the company after downloading the app, which is not true.

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<sup>30</sup> John Ribeiro, *Uber Revises Privacy Policy, Wants More Data From Users*, NETWORKWORLD.COM (May 28, 2015), <http://www.networkworld.com/article/2928513/uber-revises-privacy-policy-wants-more-data-from-users.html>.

<sup>31</sup> *Privacy Statements*, UBER.COM, <https://www.uber.com/legal/privacy-proposed/users/en> (last visited June 14, 2015).

<sup>32</sup> *Id.*

<sup>33</sup> Mariella Moon, *Uber Will Let Drivers Track Your Location, But Only If You Agree (Update)*, ENGADGET.COM (May 31, 2015), <http://www.engadget.com/2015/05/31/uber-privacy-policy-changes/>.

<sup>34</sup> *Privacy Statements*, *supra* note 19.

<sup>35</sup> Dara Kerr, *Uber Updates Privacy Policy, But Can Still Track Users*, CNET (May 29, 2015), <http://www.cnet.com/news/uber-updates-privacy-policy-but-can-still-track-users/>.

<sup>36</sup> Sunaina Chadha, *If You Have An Android Phone, Uber's New Privacy Policy Will Spook You*, FIRSTPOST.COM, (May 29, 2015), <http://www.firstpost.com/business/android-phone-ubers-new-privacy-policy-will-spook-2269042.html>.

26. Uber's representation that "users will be in control: they will be able to choose whether to share the data with Uber"<sup>37</sup> is contradicted by the change in business practices Uber plans to implement on July 15, 2015.

#### **D. Uber Regularly Abuses Its Access to Customer Location Data**

27. Uber has a history of abusing the location data of its customers. Until recently, individual employees could use "God View," an "easily accessible" internal company tool, to obtain a specific user's real-time and historic location without the customer's knowledge.<sup>38</sup>
28. One anonymous employee said that "[w]hat an Uber employee would have [access to] is everything, complete."<sup>39</sup> Staff across the company could access a customer's name, immediate location data, and Uber trip logs.<sup>40</sup> With God View, they could track a rider as she moved.
29. Uber used God View when Uber employees tracked a BuzzFeed journalist doing a story on the company. Unprompted and without permission, an Uber employee emailed the logs of some of the journalist's Uber trips, which included time stamps and Uber communications.<sup>41</sup>
30. An Uber general manager also tracked the journalist in real time as she traveled to an interview. She wrote that he was waiting for her when the vehicle pulled up, saying "[t]here you are. I tracking you" as he motioned to his iPhone.<sup>42</sup>
31. Job interviewees have been granted provisional access all the customer location data available to full-time employees, allowing non-Uber employees to temporarily track any customer.<sup>43</sup> One such interviewee was granted this access for an entire day, even after the job interview ended. He admitted using the database to search records of people he knew, including politician's relatives.<sup>44</sup>
32. At the 2011 Uber Chicago launch party, the company displayed a large real-time map of New York City on a screen, allowing guests to visually track named Uber

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<sup>37</sup> *Id.*

<sup>38</sup> Johana Bhuiyan & Charlie Warzel, "God View": Uber Investigates Its Top New York Executive For Privacy Violations, BUZZFEED (Nov. 18, 2014), <http://www.buzzfeed.com/johanabhuiyan/uber-is-investigating-its-top-new-york-executive-for-privacy#.scM0ymqne> [hereinafter, Bhuiyan & Warzel, "God View"].

<sup>39</sup> Craig Timberg, *Is Uber's Rider Database a Sitting Duck for Hackers?*, WASH. POST (Dec. 1, 2014), <http://www.washingtonpost.com/blogs/the-switch/wp/2014/12/01/is-ubers-rider-database-a-sitting-duck-for-hackers/> [hereinafter, Timberg, *Rider Database*].

<sup>40</sup> Bhuiyan & Warzel, "God View", *supra*.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> Timberg, *Rider Database*, *supra*.

<sup>44</sup> *Id.*

passengers who were riding in Uber cabs at the time, without the users' permission or knowledge.<sup>45</sup>

33. At a dinner in November 2014, Uber Senior Vice President Emil Michael announced a plan to spend \$1 million to have Uber opposition researchers investigate information on the "personal lives [and] families" of journalists who criticized Uber.<sup>46</sup> He went on to say that the researchers should particularly investigate and disseminate the private life details of a specific female tech journalist.<sup>47</sup>
34. In a blog post titled "Rides of Glory," Uber reported that it "examined its rider data, sorting it for anyone who took an Uber between 10 p.m. and 4 a.m. on a Friday or Saturday night. Then it looked at how many of those same people took another ride about four to six hours later – from at or near the previous nights' drop-off point. . . . Consider it the Uber walk of shame."<sup>48</sup>
35. The company has released a statement that its privacy policy internally "applies to all employees: access to and use of data is permitted only for legitimate business purposes. Data security specialists monitor and audit that access on an ongoing basis."<sup>49</sup> However, as seen above, what Uber considers to be "legitimate business purposes" is far broader than the average customers would imagine.

#### **E. Uber Customers Object to Uber's Revised Business Practices**

36. Commenter jameskatt2 noted that Uber's new policy "is very creepy. Uber now wants to track your location at all times. That could be a useful resource for the police, FBI, NSA, hackers, etc."<sup>50</sup>
37. User John b. wrote, "iOS allows to turn off location tracking, etc. at the app level (Privacy -> Location Services). And this is why that's needed. "While Using" is one

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<sup>45</sup> Peter Sims, *Can We Trust Uber?*, MEDIUM (Sept. 26, 2014), <https://medium.com/silicon-guild/can-we-trust-uber-c0e793deda36>.

<sup>46</sup> Craig Timberg, et al. *Uber Executive Stirs Up Privacy Controversy*, WASH. POST (Nov. 18, 2014), available at [http://www.washingtonpost.com/business/technology/uber-executive-stirs-up-privacy-controversy/2014/11/18/d0607836-6f61-11e4-ad12-3734c461eab6\\_story.html](http://www.washingtonpost.com/business/technology/uber-executive-stirs-up-privacy-controversy/2014/11/18/d0607836-6f61-11e4-ad12-3734c461eab6_story.html) [hereinafter, Timberg, *Executive*].

<sup>47</sup> Ben Smith, *Uber Executive Suggests Digging Up Dirt on Journalists*, BUZZFEED (Nov. 17, 2014), <http://www.buzzfeed.com/bensmith/uber-executive-suggests-digging-up-dirt-on-journalists#.riGAqAn55a>

<sup>48</sup> Kai Ryssdal, *Uber's data makes a creepy point about the company*, MARKETPLACE (Nov. 18, 2014), available at <http://www.marketplace.org/topics/business/final-note/ubers-data-makes-creepy-point-about-company>.

<sup>49</sup> *Id.*

<sup>50</sup> jameskatt2, Comment to *Uber to allow background location tracking in privacy policy update*, APPLE INSIDER (May 31, 2015, 01:26 PM), <http://appleinsider.com/articles/15/05/29/uber-to-allow-background-location-tracking-in-privacy-policy-update>.



thing, “Always” is something else entirely. There is no valid reason for apps like these to have 24/7 location data. Same things with Contact data. . . . SMH.”<sup>51</sup>

38. User BeowulfSchmidt posted: “Well, that pretty much settles the question of me ever using Uber, as either a passenger or a driver.”<sup>52</sup>

39. User gcv posted:

I contacted Uber to ask about opting out of its having access to my personal contacts which enables Uber to send those people spam and unsolicited marketing emails. The whole concept really, really makes me angry. The response I got was that all of the information collected is encrypted so I shouldn’t worry - which evaded the entire point. I don’t give a rip if it is encrypted. Uber should not have this sort of access. (Maybe it’s Uber’s version of The Patriot Act and the ability to unjustifiably collect droves of personal information on us all.)

I don’t want companies trolling my personal data like contacts, and using it essentially harrass (sic) my friends and family. If I can’t opt out I will no longer use Uber. This new policy is the ultimate in sleazy business practices. It is not like Uber doesn’t make money from other means, like the fares we users pay to use the service.

I think this comes down to unmitigated greed, and the ability to sell that data base when Uber has its IPO.<sup>53</sup>

40. User Rayz wrote, “Wouldn’t tracking constantly drain the phone batter? And they need to bolster their ethics team, not the legal department.”<sup>54</sup>

41. User Jeff Allen told the *New York Times*, “I think it’s none of their business where I am up until the moment when I elect to use their service.”<sup>55</sup>

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<sup>51</sup> john.b, Comment to *Uber to allow background location tracking in privacy policy update*, APPLE INSIDER (May 29, 2015, 06:10 PM), <http://appleinsider.com/articles/15/05/29/uber-to-allow-background-location-tracking-in-privacy-policy-update>.

<sup>52</sup> beowulfschmidt, Comment to *Uber to allow background location tracking in privacy policy update*, APPLE INSIDER (May 31, 2015 07:44 AM), <http://appleinsider.com/articles/15/05/29/uber-to-allow-background-location-tracking-in-privacy-policy-update>.

<sup>53</sup> gcv, Comment to *Uber to allow background location tracking in privacy policy update*, APPLE INSIDER (May 30, 2015, 09:17 PM), <http://appleinsider.com/articles/15/05/29/uber-to-allow-background-location-tracking-in-privacy-policy-update>.

<sup>54</sup> rayz, Comment to *Uber to allow background location tracking in privacy policy update*, APPLE INSIDER (May 29, 2015, 11:54 PM), <http://appleinsider.com/articles/15/05/29/uber-to-allow-background-location-tracking-in-privacy-policy-update>.

<sup>55</sup> Natasha Singer, *Sharing Data, but Not Happily*, N.Y. TIMES, June 4, 2015, at B1, available at [http://www.nytimes.com/2015/06/05/technology/consumers-conflicted-over-data-mining-policies-report-finds.html?\\_r=1](http://www.nytimes.com/2015/06/05/technology/consumers-conflicted-over-data-mining-policies-report-finds.html?_r=1).

42. Twitter user Matt Keish wrote, “Read this, then walk everywhere.  
<https://www.uber.com/legal/privacy-proposed/users/en. . .>”<sup>56</sup>
43. User SpiderOak posted, “Let's go with definitely not necessary: ‘Are Uber's New #Privacy Changes Creepy Or Necessary?’”<sup>57</sup>
44. User Jeffrey Paul wrote, “Uber admits to stealing your whole address book.”<sup>58</sup>
45. Uber driver and Twitter user @driver\_mack noted “Uber's new driver privacy policy says they can share my info to general public if I blog or tweet. Amongst many other worrying things.”<sup>59</sup>
46. User Richard Regen wrote, “Just when you thought you got back a little privacy after the Patriot Act expired, you lost it all in @Uber’s new privacy statement.”<sup>60</sup>
47. User E.J. Coughlin posted, “Uber’s new privacy statement: ‘Privacy is an illusion.’”<sup>61</sup>
48. User Jamie Boudreau commented, “I like that if someone else is connected to you they still get your info as they'll comb through their contacts. . . .”<sup>62</sup>
49. User @nakish19\_77 posted, “If you have an Android phone, Uber’s new privacy policy will spook you.”<sup>63</sup> @nakish19\_77 posted further, “Uber revises privacy policy, wants more #data from users.”<sup>64</sup>
50. User ReggieVaitz wrote, “Once u use @uber u sign away ur privacy!!”<sup>65</sup>

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<sup>56</sup> Matt Keish (@mattro), TWITTER (June 9, 2015, 5:25 PM), <https://twitter.com/mattro/status/608429628324257792>.

<sup>57</sup> @SpiderOak, TWITTER (June 9, 2015, 6:16 AM), <https://twitter.com/SpiderOak/status/608261262703624192>.

<sup>58</sup> Jeffrey Paul (@sneakatdatavibe), TWITTER (June 8, 2015, 4:21 PM), <https://twitter.com/sneakatdatavibe/status/608051128656347136>.

<sup>59</sup> @driver\_mack, TWITTER (June 4, 2015, 4:16 PM), [https://twitter.com/driver\\_mack/status/606600429380767744](https://twitter.com/driver_mack/status/606600429380767744).

<sup>60</sup> Richard Regen (@realrichregen), TWITTER (June 8, 2015, 1:35 PM), <https://twitter.com/realrichregen/status/608009501069950977>.

<sup>61</sup> E.J. Coughlin (@ejc), TWITTER (June 8, 2015, 1:52 PM), <https://twitter.com/ejc/status/608013765787815937>.

<sup>62</sup> Jamie Boudreau (@JamieBoudreau), TWITTER (June 8, 2015, 2:54 PM), <https://twitter.com/JamieBoudreau/status/608029243621015552>.

<sup>63</sup> @nakish19\_77, TWITTER (June 1, 2015, 7:21 AM), [https://twitter.com/Nakish19\\_77/status/605378696866885633](https://twitter.com/Nakish19_77/status/605378696866885633).

<sup>64</sup> @nakish19\_77, TWITTER (June 1, 2015, 6:49 PM), [https://twitter.com/Nakish19\\_77/status/605551695637135360](https://twitter.com/Nakish19_77/status/605551695637135360).

<sup>65</sup> ReggieVaitz (@ReggieVaitz), TWITTER (June 2, 2015, 9:24 AM), <https://twitter.com/ReggieVaitz/status/605771871636713473>.

51. User Lawrence Mulligan posted, “@Uber 's new privacy statement could also be described as a no-privacy statement @PandoDaily @mashable @SFGate.”<sup>66</sup>
52. Twitter user Michael Keller, wrote:
- Uber’s new geolocation terms show why opt-in / out is a broken privacy concept:
- [attached image reads:] “The company’s new privacy policy, scheduled to take effect on July 15, says that if customers permit the Uber app to connect to location data, the app may collect the precise locations of their devices whether the app is running in the foreground or the background. Whether or not customers turn on that permission, the app still may deduce their general location based on other signals from their devices.
- And, if consumers use the ride-hailing app on or after that date, the company will conclude that they have read and agreed to the terms, Uber said in a recent email to customers.
- In other words, Uber customers may resign themselves to having their data extracted — or forgo the service altogether.”<sup>67</sup>
53. Belgian law professor Anne-Lise Sibony posted, “Time to think about your own privacy v convenience tradeoff #Uber.”<sup>68</sup>
54. User Javier Blanco H. posted, “#Uber’s new privacy policy admits that riders have no privacy.”<sup>69</sup>
55. User Christopher Silsby wrote, “As if their privacy violation, lack of regulation, and harassment of reporters weren't enough reason to dislike Uber.”<sup>70</sup>
56. Twitter user @injudiciouslex posted, “Users personal tracking with opt in not much relief following the ‘god view’ and ‘rides of glory’ privacy breaches.”<sup>71</sup>

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<sup>66</sup> Lawrence Mulligan (@lawkercai), TWITTER (June 11, 2015, 10:56 AM), <https://twitter.com/lawkercai/status/609056742119473153>.

<sup>67</sup> Michael Keller (@mhkeller), TWITTER (June 4, 2015, 2:22 PM), <https://twitter.com/mhkeller/status/606571825385095169> (quoting Singer, *supra* note 37).

<sup>68</sup> Anne-Lise Sibony (@AnneLiseSibony), TWITTER (May 31, 2015, 12:25 PM), <https://twitter.com/AnneLiseSibony/status/605092634294661121>.

<sup>69</sup> Javier Blanco H. (@JavierBlancoH), TWITTER (June 1, 2015, 7:00 AM), <https://twitter.com/JavierBlancoH/status/605373405102272512>.

<sup>70</sup> Christopher Silsby (@silsbyc), TWITTER (June 1, 2015, 4:08 AM), <https://twitter.com/silsbyc/status/605330071641944065>.

<sup>71</sup> @injudiciouslex, TWITTER (May 31, 2015, 6:35 PM), <https://twitter.com/injudiciouslex/status/605185926973628416>.

## **F. Uber Fails to Take Adequate Security Measures to Protect Its Database of User Information**

57. Uber proposes to changes its business practices with this revised privacy policy:

We may transfer the information described in this Statement to, and process and store it in, the United States and other countries, some of which may have less protective data protection laws than the region in which you reside. Where this is the case, we will take appropriate measures to protect your personal information in accordance with this Statement.<sup>72</sup>

58. However, multiple security experts have stated that Uber is the largest ever “cyber-espionage target” of its kind (taxi, car service, or other such private entity).<sup>73</sup> Uber is a popular service in Washington, D.C., having accounted for more than 60% of Congressional rides under \$100 during the 2014 mid-term Congressional campaign season.<sup>74</sup>

59. In spring 2014, Uber suffered data breach that potentially exposed over 50,000 former and current drivers’ names and license plates. The company did not discover the breach until September 17, 2014 and failed to notify the drivers until February 27, 2015.<sup>75</sup>

60. A cyber-security expert at the Center for Strategic and International Studies, said that Uber customers’ personal information is “likely vulnerable” to a hack.<sup>76</sup>

61. A *Washington Post* reporter wrote that Uber’s data represents a significant “cybersecurity risk of collected massive troves of private travel information in online databases.”<sup>77</sup>

## **G. Privacy Experts Identify Uber’s Customer Location Abuses As Particularly Egregious**

62. Bruce Schneier, the author of *Data and Goliath: The Hidden Battles to Collect Your Data and Control Your World* (Norton 2015), pointed to Uber’s God View as a prime reason for why the Federal Trade Commission should act to protect consumer

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<sup>72</sup> *Privacy Statements*, *supra* note 619.

<sup>73</sup> *Id.*

<sup>74</sup> Tom Kise, *Congress Votes Uber*, Hamilton Place Strategies (Nov. 2014), *available at* <http://www.hamiltonplacestrategies.com/news/uber-congress-new-private-driver>.

<sup>75</sup> Tracey Lien, *Uber Security Breach May Have Affected Up to 50,000 Drivers*, LA TIMES (Feb. 27, 2015), *available at* <http://www.latimes.com/business/technology/la-fi-tn-uber-data-breach-20150227-story.html>.

<sup>76</sup> Timberg, *Rider Database*, *supra* note 21.

<sup>77</sup> Timberg, *Rider Database*, *supra* note 21.

privacy. Following the revelation that Uber used God View to track riders, Schneier wrote:

None of us wants to be stalked -- whether it's from looking at our location data, our medical data, our emails and texts, or anything else -- by friends or strangers who have access due to their jobs. Unfortunately, there are few rules protecting us. . . .

As long as we have to give our data to companies and government agencies, we need assurances that our privacy will be protected. Moreover, we need legal limits on what can be done with our data . . . Making these changes doesn't require an act of Congress. It's something that the Federal Trade Commission can do . . . As long as companies are collecting and storing our data, they need to be held to standards of security and professionalism.<sup>78</sup>

63. Even after the audit following the God View fiasco, Bruce Schneier said there were “questions unanswered” about Uber’s surveillance power and stated he “saw nothing in their statements” to alleviate privacy concerns.<sup>79</sup>
64. Privacy experts have also explained that Uber’s data collection practices are excessive. Marc Rotenberg, the President of EPIC, and Julia Horwitz, Consumer Privacy Director at EPIC, previously warned:

The app model is also a data vacuum, gathering detailed information about users and drivers that that the company controls. Much of the data collection is excessive. For example, [...] the Uber privacy policy also reveals that the company collects the IP addresses, manufacturers, and operating systems of users’ phones. Uber collects information about the mobile web browsers used by its customers, exchanges data with advertisers, and tracks users across the Internet.<sup>80</sup>

65. Rotenberg and Horwitz have also described model privacy laws for Uber and other ridesharing services:

What would the law do? First, Uber would be limited in the type of personal information it can collect. Payment information is obvious, as is travel information. But beyond those categories, the burden would be on Uber to justify the collection of personal data. Second, Uber would be

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<sup>78</sup> Bruce Schneier, *Why Uber’s ‘God View’ is Creepy*, CNN (Dec. 4, 2014), <http://www.cnn.com/2014/12/04/opinion/schneier-uber-privacy-issue/>.

<sup>79</sup> Frizell, *supra* note 13.

<sup>80</sup> Julia Horwitz & Marc Rotenberg, *Privacy Rules for Uber*, THE HUFFINGTON POST (Dec. 12, 2014), [http://www.huffingtonpost.com/julia-horwitz/privacy-rules-for-uber\\_b\\_6304824.html](http://www.huffingtonpost.com/julia-horwitz/privacy-rules-for-uber_b_6304824.html).

required to delete passenger information after it was no longer needed. It seems obvious that once the ride is completed, Uber should delete the travel records. Third, users should be able to access at any time a complete record of all of the information Uber has about them: all of the records and logs and advertising promotions. If Uber has information about passengers, they should know what Uber knows.<sup>81</sup>

66. “It’s a huge trove of data that could be used for a whole number of uses,” said Christopher Parsons, a digital privacy expert at Citizen Lab, a research center at the University of Toronto.<sup>82</sup>
67. Other cyber security experts, such as Lorrie Faith Cranor, director of the CyLab Usable Privacy and Security Laboratory at Carnegie Mellon University, have noted that, “This is written in a way to protect themselves from liability” and “[t]his is a company that collects and uses a lot of data.”<sup>83</sup>

#### **H. Members of Congress and Others Have Expressed Concern About Uber’s Business Practices**

68. Senator Al Franken has confronted Uber directly about the company’s data collection practices. After Uber’s use of God View was exposed, Senator Franken asked Uber to account for the “scope, transparency, and enforceability” of Uber’s data collection practices.<sup>84</sup> He was especially troubled because “there appears to be evidence of inconsistent practices with the polic[ies].”
69. Following Uber’s cursory reply<sup>85</sup>, Senator Franken wrote again to the company, demanding that it provide a more detailed reply, including how many Uber employees have access to Uber’s God View program and why Uber’s employees need access to God View at all.<sup>86</sup>
70. Senator Claire McCaskill and Senator Bill Nelson wrote to Uber and demanded a response to their “concerns about [Uber’s] data practices and its commitment to the

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<sup>81</sup> *Id.*

<sup>82</sup> Timberg, *Rider Database*, *supra* note 21.

<sup>83</sup> Eric Newcomer, *Uber Broadens Rider Privacy Policy, Asks for New Permissions*, BLOOMBERG, May 28, 2015, <http://www.bloomberg.com/news/articles/2015-05-28/uber-broadens-rider-privacy-policy-asks-for-new-permissions>.

<sup>84</sup> Letter from Al Franken, Chairman, S. Comm. on Privacy, Technology, and the Law, to Travis Kalanick, Chief Exe. Officer, Uber Technologies, Inc. (Nov. 19, 2014), *available at* <http://www.franken.senate.gov/files/letter/141119UberLetter.pdf>.

<sup>85</sup> Letter from Katherine M. Tassi, Managing Privacy Counsel, Uber Technologies, Inc., to Al Franken, Chairman, S. Comm. on Privacy, *available at* <http://www.franken.senate.gov/files/documents/141215UberResponse.pdf>.

<sup>86</sup> Maya Kosoff, “Al Franken goes after Uber again, and he’s pressing for better answers about customer privacy,” Jan. 30, 2015, <http://www.businessinsider.com/al-franken-sends-uber-another-letter-2015-1#ixzz3dhxeShfz>

terms of its own privacy policy,” especially in regards to tracking user location and accessing user data.<sup>87</sup>

71. Senator Cory Booker has also cautioned that “ride hailing services [...] shouldn't be exempt from regulations that ensure consumer safety and privacy.”<sup>88</sup>
72. California State Assemblymember Ed Chau has introduced Assembly Bill 866, state legislation that would protect the privacy rights of Californians who use “transportation network companies” such as Uber.<sup>89</sup> Assemblymember Chau explained:

Limiting the data collected by ridesharing mobile applications does not reduce the functionality and availability to consumers that use and love them. On the contrary, this legislation is not about limiting the consumer, it is about giving the consumer ownership of their privacy, which can be the subject of abuse under certain circumstances. It's time to put the consumer in the driver seat when it comes to who controls their personal information instead of having them take a backseat!<sup>90</sup>

73. Jeremy Pollock, a legislative aide to San Francisco Supervisor John Avalos, commented, “They have this bullying attitude like they can do whatever they want and they have a vindictive attitude toward people who get in their way.”<sup>91</sup>

#### **H. Uber Regularly Abuses Its Access to User Telephone Numbers**

74. Uber also regularly sends out unsolicited text messages to customers and to customers’ contact lists.
75. Regarding the disclosure of user information to third parties, Uber's currently states that user information will only be disclosed in two circumstances. First, participants may use a referral service, which the policy states will prompt a one-time email to participants' contacts, inviting them to join Uber. Second, where the “split a trip fare” option is chosen, a text message will be sent to the party with whom the user wishes to split the fare, who may accept or decline the request to split. Uber states

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<sup>87</sup> Claire McCaskill and Bill Nelson, *Letter to Uber: Privacy Practices*, UNITED STATES SENATE: COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION 1 (Dec. 19, 2014), *available at* <http://www.mccaskill.senate.gov/imo/media/doc/LettertoUberPrivacyPractices.pdf>.

<sup>88</sup> Levinthal, *supra* note 93.

<sup>89</sup> Allen Young, *California Consumer Advocates: Uber Spying Must be Stopped*, SACRAMENTO BUSINESS JOURNAL (Apr. 16, 2015), <http://www.bizjournals.com/sacramento/news/2015/04/16/california-consumer-attorneys-uber-spying-must-be.html>.

<sup>90</sup> *AB 886 (Chau) Protects Uber Passenger Privacy*, PR NEWswire, (Apr. 16, 2015), <http://www.prnewswire.com/news-releases/ab-886-chau-protects-uber-passenger-privacy-300066821.html>.

<sup>91</sup> Elizabet Weise & Jessica Guynn, *Uber Tracking Raises Privacy Concerns*, USA TODAY (Nov. 19, 2014), <http://www.usatoday.com/story/tech/2014/11/19/uber-privacy-tracking/19285481/>.

that it will not use this information for any marketing purpose unless prior consent is obtained or unless otherwise explicitly stated.<sup>92</sup>

76. However, in December 2014, Jason Koebler of *Motherboard*, a technology and science online news source, reported that the FTC had received several complaints from “[p]eople who have never driven for or even used the service” who “said they are still receiving a high volume of text messages from Uber and have been unable to make them stop.”<sup>93</sup>
77. Koebler also noted, “The text messages we’ve seen from Uber don’t explain that texting ‘STOP’ will actually stop them—and some of the complaints specifically mention that the keyword didn’t work.”<sup>94</sup>
78. Those who receive such messages express outrage at their frequency; the difficulty of unsubscribing; and the fact that the users never consented to giving their details or the details of third parties connected to them.
79. For example, user DanielMiami said:

This is disturbing, my girl just text me saying she received a text message from uber [sic] saying I invited her to become a driver.

"UberMSG: Congratulations! Your friend Daniel wants you to be an Uber partner. Both of you can make money when you APPLY HERE:  
t.uber.com/cashec"

1. How did they get her phone number?
2. That's not even my referral promo code

Do they have access to our contact list in our phones?<sup>95</sup>

80. User UberHammer said, “I made a drinking game out of the texts. Downed a beer after each text received. Had to drink 8 last Friday night.”<sup>96</sup>
81. User Wei Rodrigues wrote “Every Uber spam text I get comes from a completely different number. I tried blocking one when I 1st got irritated. They kept coming. It

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<sup>92</sup> *Uber Privacy Policy*, UBER.COM, <https://www.uber.com/legal/usa/privacy> (last visited June 15, 2015).

<sup>93</sup> Joseph Koebler, *Uber's Text Message Spam Is Driving People Crazy*, MOTHERBOARD (June 12, 2015 3:25 A.M.), [http://motherboard.vice.com/read/ubers-text-message-spam-is-driving-people-crazy?utm\\_source=mbtwitter](http://motherboard.vice.com/read/ubers-text-message-spam-is-driving-people-crazy?utm_source=mbtwitter).

<sup>94</sup> *Id.*

<sup>95</sup> Danielmiami, Comment to *Does Uber App Have Access to Our Contact List?*, UBERPEOPLE.NET (Nov. 20, 2014), <http://uberpeople.net/threads/does-uber-app-have-access-to-our-contact-list.7421/>.

<sup>96</sup> UberHammer, Comment to *Is there A Way to Unsubscribe to Uber Spamming Texts?*, UBERPEOPLE.NET (June 12, 2015), <http://uberpeople.net/threads/is-there-a-way-to-unsubscribe-to-uber-spamming-texts.12495/>.



was then I realized they were different source #s. They make sure you're gonna keep getting them!”<sup>97</sup>

## **I. Uber’s Text Messaging Activity May Violate the Telephone Consumer Protection Act**

82. In view of the above, Uber's text messaging activity may violate the Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq. (“TCPA”).

83. Under the federal regulations applying the Act, Uber is prohibited from:

“[I]nitiat[ing], or caus[ing] to be initiated, any telephone call that includes or introduces an advertisement or constitutes telemarketing, using an automatic telephone dialing system or an artificial or prerecorded voice, to any of the lines or telephone numbers described in paragraphs (a)(1)(i) through (iii) of this section, other than a call made with the prior express written consent of the called party . . .”<sup>98</sup>

84. “Telephone call” has been interpreted to include text messages for the purposes of the TCPA.<sup>99</sup>

85. According to the FCC, “[t]he term advertisement means any material advertising the commercial availability or quality of any property, goods, or services”<sup>100</sup> while “automatic telephone dialing system and autodialer mean equipment which has the capacity to store or produce telephone numbers to be called using a random or sequential number generator and to dial such numbers.”<sup>101</sup>

86. There is currently a class action suit before the United States District Court for the Northern District of California which alleges that Uber’s text message spam violated the TCPA because the messages constituted telemarketing or advertising and were sent to them without prior express written consent.<sup>102</sup> At least one plaintiff has received texts despite never having been an Uber member driver or user.<sup>103</sup>

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<sup>97</sup> *Id.*

<sup>98</sup> 47 C.F.R. § 64.1200(a)(2).

<sup>99</sup> *Satterfield v. Simon & Schuster, Inc.*, 569 F.3d 946,949 (9th Cir. 2009); Brief for Defendants-Apellees at 4., *Satterfield v. Simon & Schuster, Inc.*, 569 F.3d 946 (9th Cir. 2009) (No. 07-16356), 2007 WL 4856754 at 7337.

<sup>100</sup> *Id.* at (f) (1).

<sup>101</sup> *Id.* at (f) (2).

<sup>102</sup> Brief of Petitioner at 1, *Reardon et al. v. Uber Technologies Inc.*, No. 3:14-cv-05678-JST (N.D. Cal) 2014.

<sup>103</sup> Tracey Kaplan, *Lawsuit claims Uber pesters consumers via spam texts to work as drivers*, SAN JOSE MERCURY NEWS, (June 12, 2015), <http://phys.org/news/2015-01-lawsuit-uber-pesters-consumers-spam.html>.

## IV. Legal Analysis

### **A. The FTC's Section 5 Authority**

87. The FTC Act prohibits unfair and deceptive acts and practices, and empowers the Commission to enforce the Act's prohibitions.<sup>104</sup> These powers are described in FTC Policy Statements on Deception<sup>105</sup> and Unfairness.<sup>106</sup>
88. A trade practice is unfair if it "causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition."<sup>107</sup>
89. The injury must be "substantial."<sup>108</sup> Typically, this involves monetary harm, but may also include "unwarranted health and safety risks."<sup>109</sup> Emotional harm and other "more subjective types of harm" generally do not make a practice unfair.<sup>110</sup> Secondly, the injury "must not be outweighed by an offsetting consumer or competitive benefit that the sales practice also produces."<sup>111</sup> Thus the FTC will not find a practice unfair "unless it is injurious in its net effects."<sup>112</sup> Finally, "the injury must be one which consumers could not reasonably have avoided."<sup>113</sup> This factor is an effort to ensure that consumer decision making still governs the market by limiting the FTC to act in situations where seller behavior "unreasonably creates or takes advantage of an obstacle to the free exercise of consumer decision making."<sup>114</sup> Sellers may not withhold from consumers important price or performance information, engage in coercion, or unduly influence highly susceptible classes of consumers.<sup>115</sup>

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<sup>104</sup> See 15 U.S.C. § 45 (2010).

<sup>105</sup> Fed. Trade Comm'n, FTC Policy Statement on Deception (1983), available at <http://www.ftc.gov/bcp/policystmt/ad-decept.htm> [hereinafter FTC Deception Policy].

<sup>106</sup> Fed. Trade Comm'n, FTC Policy Statement on Unfairness (1980), available at <http://www.ftc.gov/bcp/policystmt/ad-unfair.htm> [hereinafter FTC Unfairness Policy].

<sup>107</sup> 15 U.S.C. § 45(n); see, e.g., *Fed. Trade Comm'n v. Seismic Entertainment Productions, Inc.*, Civ. No. 1:04-CV- 00377 (Nov. 21, 2006) (finding that unauthorized changes to users' computers that affected the functionality of the computers as a result of Seismic's anti-spyware software constituted a "substantial injury without countervailing benefits.").

<sup>108</sup> FTC Unfairness Policy, *supra*.

<sup>109</sup> *Id.*; see, e.g., *Fed. Trade Comm'n v. Information Search, Inc.*, Civ. No. 1:06-cv-01099 (Mar. 9, 2007) ("The invasion of privacy and security resulting from obtaining and selling confidential customer phone records without the consumers' authorization causes substantial harm to consumers and the public, including, but not limited to, endangering the health and safety of consumers.").

<sup>110</sup> FTC Unfairness Policy, *supra*.

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

90. An act or practice is deceptive if it involves a representation, omission, or practice that is likely to mislead the consumer acting reasonably under the circumstances, to the consumer's detriment."<sup>116</sup>
91. There are three elements to a deception claim. First, there must be a representation, omission, or practice that is likely to mislead the consumer.<sup>117</sup> The relevant inquiry for this factor is not whether the act or practice actually misled the consumer, but rather whether it is likely to mislead.<sup>118</sup>
92. Second, the act or practice must be considered from the perspective of a reasonable consumer.<sup>119</sup> "The test is whether the consumer's interpretation or reaction is reasonable."<sup>120</sup> The FTC will look at the totality of the act or practice and ask questions such as "how clear is the representation? How conspicuous is any qualifying information? How important is the omitted information? Do other sources for the omitted information exist? How familiar is the public with the product or service?"<sup>121</sup>
93. Finally, the representation, omission, or practice must be material.<sup>122</sup> Essentially, the information must be important to consumers. The relevant question is whether consumers would have chosen another product if the deception had not occurred.<sup>123</sup> Express claims will be presumed material.<sup>124</sup> Materiality is presumed for claims and omissions involving "health, safety, or other areas with which the reasonable consumer would be concerned."<sup>125</sup>
94. The FTC presumes that an omission is material where "the seller knew, or should have known, that an ordinary consumer would need omitted information to evaluate the product or service, or that the claim was false . . . because the manufacturer intended the information or omission to have an effect."<sup>126</sup>
95. The Commission has previously found that a company may not alter the privacy settings of its users.<sup>127</sup>

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<sup>116</sup> FTC Deception Policy, *supra*.

<sup>117</sup> FTC Deception Policy, *supra*; *see, e.g., Fed Trade Comm'n v. Pantron I Corp.*, 33 F.3d 1088 (9th Cir. 1994) (holding that Pantron's representation to consumers that a product was effective at reducing hair loss was materially misleading, because according to studies, the success of the product could only be attributed to a placebo effect, rather than on scientific grounds).

<sup>118</sup> FTC Deception Policy, *supra*.

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> *Cliffdale Associates, Inc.*, 103 F.T.C. 110, 110 (1984).

<sup>127</sup> *In the Matter of Facebook, Inc., a corporation; FTC File No. 092 3184*, FTC.gov (Dec. 30, 2011), <http://www.ftc.gov/enforcement/cases-proceedings/092-3184/facebook-inc>.

96. The Commission has previously found that a company may not repurpose user data for a use other than the one for which the user's data was collected without first obtaining the user's "express affirmative consent."<sup>128</sup>

**B. Count I: Deceptive Representation that "Users Will be in Control" of their Privacy Settings<sup>129</sup>**

97. As described in detail above, Uber represented to consumers that "users will be in control" of their privacy settings and can "choose whether to share the data with Uber."<sup>130</sup>
98. As described in detail above, users are not truly in control of the data they disclose to Uber. Uber retains the ability to track users even if users choose not to share location data with Uber. Android users cannot turn off contact sharing once they have used the app, and all users cannot turn off approximate location sharing after downloading the app.
99. Users could not reasonably know that they are not truly in control of what data they want to share with Uber.
100. Uber's representations are likely to mislead the reasonable consumer.
101. There is a clear divide between Uber's representations as to their consumers' control over their personal information, and Uber's actual business practices. Consumers are led to believe that they retain control over their personal data, when in fact they do not.
102. Therefore, Uber engaged in a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

**C. Count II: Deceptive Representation that Users Would be Able to Opt Out of Targeted Advertising**

103. As described above, Uber represented to consumers in 2013 that they would have the opportunity to opt out of targeted advertising.
104. Uber also represented to consumers in 2015 that they would be "in control" of their data under the new privacy policy.<sup>131</sup>

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<sup>128</sup> *In the Matter of Google, Inc.*; FTC File No. 102 3136 (Oct. 13, 2011) (Decision and Order), <http://www.ftc.gov/sites/default/files/documents/cases/2011/10/111024googlebuzzdo.pdf>.

<sup>129</sup> Tassi, *supra* note 1.

<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

105. Uber chose not to provide a means of opting out of targeted advertising in its revised privacy policy.
106. Given Uber's privacy assurances, Uber users acting reasonably would likely be misled into believing that they can opt out of targeted advertising under the revised policy, when in fact they cannot.
107. This inconsistency is to Uber users' detriment; their personal information could be disclosed to parties they did not intend to disclose to.
108. Therefore, Uber's choice not to provide a means of opting out of targeted advertising in its revised privacy policy constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

**D. Count III: Deceptive Representation that Users' Data Would be Protected by Robust Security Measures**

109. As described in detail above, Uber users would reasonably expect Uber to abide by its policy statement and "take appropriate measures to protect [their] personal information."<sup>132</sup>
110. Industry experts have identified that Uber's data collection of intimate customer details is valuable to unauthorized third party users and is likely vulnerable to attacks.
111. Uber's database has already been successfully hacked before, exposing tens of thousands of its drivers' information.
112. Uber has a history of allowing individuals within and without the company to have unrestricted access to its customers' personal information.
113. Therefore, Uber's failure to adequately disclose that its security measures may not protect its customer's personal constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).
114. Users could not reasonably be aware of the inadequate disclosures regarding the potential for security breach of the privacy policy.
115. The inadequate disclosures are not outweighed by countervailing benefits to consumers or to competition.
116. Uber's inadequate disclosures constitute deceptive acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45(a).

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<sup>132</sup> *Privacy Statements*, *supra* note 19.

#### **E. Count IV: Deceptive and Unfair Practice of Tracking Users' IP Addresses**

117. Uber's IP address tracking practice constitutes an unfair business practice because it is likely to cause substantial injury to consumers, which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition. The injury is substantial because deriving users' proximate locations without their knowledge poses potential safety risks. Uber's IP tracking practice also undermines consumers' decision-making autonomy when consumers expressly decline to disclose location data to Uber.
118. This injury is not reasonably avoidable by consumers themselves. Consumers must completely delete the app or quit using Uber's services to stop Uber from collecting their IP addresses. Consumers are thus forced to choose between forgoing their privacy interest and forgoing Uber's services, and there is no way consumers can use Uber while preventing their location information from being collected.
119. There is no evidence that Uber's IP address data collection practice provides overwhelming benefits to consumers or to competition.
120. Uber's IP address tracking practice also constitutes deceptive practice. As referenced above, Uber claims that users will be able to choose whether to permit Uber to collect location data. This statement is likely to mislead consumers into believing that they can choose to not disclose location information to Uber after downloading the app.
121. Reasonable consumers are likely to misinterpret Uber's representation about user control. Reasonable consumers would not expect that Uber might use their IP addresses for tracking purposes that violate Uber's own pledge.
122. The misrepresentation is material because whether users are able to choose to disclose their location information is important and would have influenced the consumer decision-making processes.

#### **V. Prayer for Investigation and Relief**

123. EPIC urges the Commission to investigate Uber Technologies, Inc., and enjoin its unfair and deceptive data collection practices with respect to Uber's revised privacy policy that the company plans to implement on July 15, 2015.
124. Specifically, EPIC requests the Commission to:
  - a. Initiate an investigation of Uber's business practices, including the collection personal data from users of location data and contact list

information ;

- b. Halt Uber's collection of user location data when it is unnecessary for the provision of the service;
- c. Halt Uber's collection of user contact list information;
- d. Require the implementation of data minimization measures, including the routine deletion of location data once the ride is completed;
- e. Mandate algorithmic transparency, including the publication of specific information about the rating techniques established by Uber to profile and evaluate customers;
- f. Require Uber to comply with the Consumer Privacy Bill of Rights;
- g. Investigate Uber's possible violation of the Telephone Consumer Protection Act;
- h. Investigate other companies engaged in similar practices; and,
- i. Provide such other relief as the Commission finds necessary and appropriate.

Respectfully Submitted,

/s/

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